Revising probation/community supervision

HB 2193 by Madden (Whitmire)

DIGEST:

HB 2193 would have revised the state's probation (community supervision) system.

Length of probation terms. HB 2193 would have reduced from 10 years to five years the initial probation and deferred adjudication terms that judges can impose for third-degree felonies that are not "3g" or sex offenses. ("3g" offenses are certain violent and serious crimes listed in Code of Criminal Procedure, art. 42.12, sec. 3g.) These probation terms could have been extended up to 10 years through a maximum of five one-year extensions. HB 2193 would have kept the 10-year maximum period of probation and deferred adjudication for offenders guilty of "3g" felony offenses, offenses that result in a person having to register as a sex offender, and for first- and second-degree felonies.

HB 2193 would not have changed the minimum or maximum probation terms for state jail felons. The bill would have repealed certain minimums, maximums, and extensions for probation terms that could be given to some sex offenders. It would have expanded the mandate that some low-level state jail drug offenders be placed on probation to include state jail felons with previous state jail drug offenses that were punished as misdemeanors. HB 2193 would have prohibited a person convicted of murder from receiving jury-recommended probation.

Mandatory review for possible reduction or termination of probation. Judges would have been required to review defendants' records and consider whether to reduce or terminate probation after defendants had served one-half of their sentences. Judges would have retained their current authority to reduce or terminate probation terms after the lesser of one-third of the term or two years. HB 2193 would have applied provisions on early termination to state jail felons but made "3g" defendants ineligible for early termination. It would have continued the prohibition on early termination for offenders subject to the state's sex offender registration laws.

Giving credit against a sentence. HB 2193 would have made changes in the laws governing when judges had to give probationers credit for time spent in court-ordered residential treatment programs or facilities.

Community service. HB 2193 would have given judges discretion about whether to require probationers to perform community service, a change to the current mandate that all defendants be required to do so.

Drug courts. HB 2193 would have required more counties to establish drug courts, but the requirement would have taken effect only if a county received federal or state funding for the courts. The requirement to establish drug courts would have been applied to counties with populations of at least 200,000, rather than the current 550,000. HB 2193

would have authorized a new $50 fee to fund the state's drug courts, which would have been charged to defendants convicted of driving while intoxicated and other intoxication, alcoholic beverage, and drug offenses. Counties would have been able to keep 10 percent of the fee.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2193 would reduce the maximum period of probation for certain third degree felonies from 10 to 5 years. This bill would shorten the probation for those who are convicted of assault on a peace officer and taking a weapon away from a peace officer. I will not sign legislation that reduces penalties for offenses against law enforcement officers.

"This bill would also reduce the maximum period of probation for offenses such as kidnapping, injury to a child, repeated spousal abuse, intoxication assault and habitual felony drunk driving. These are serious crimes and I do not believe Texas should reduce probationary sentences for offenders who endanger the lives of others in such crimes.

"House Bill No. 2193 would also add court fines to expand drug courts in Texas; however, there was no appropriation of these new revenues and the intended purpose would not be funded.

"Attempts to improve this legislation that would have provided greater public safety were rebuffed, ensuring a flawed piece of legislation that would endanger public safety made it to my desk instead of one that could have made needed improvements to our probation system.

"This legislation has raised concerns from many on the front lines of prosecuting these crimes, and I can only conclude their opposition stems from good cause.

"Senate Bill No. 1, the Appropriations Bill, provides $55 million in additional funding for probation officers, which will help reduce their caseloads, and I support that funding."

RESPONSE:

Rep. Jerry Madden, the bill's author, in a letter to the governor, said: "I am disappointed with your veto of HB 2193. It was a well tuned and balanced bill that would have improved the state probation system. The changes were sensible, realistic and economical ways to enhance public safety. Passage of the bill would have allowed our probation resources to be properly used on the most dangerous probationers.

"The bill was supported overwhelming by both houses, and had only one person testify against it throughout the process. The provisions of the bill were the result of six consecutive years of study through interim legislative charges. During that time, the

Judicial Advisory Council and the Criminal Justice Assistance Division (CJAD) sought the opinions of all judges, prosecutors, defense attorneys and probation professionals on all of the issues in the bill and each provision received the overwhelming support of each group. Additionally, there was a great amount of statistical research that was used throughout the development of the bill.

"Considering that neither you or a representative of your office attempted to discuss this legislation with the author prior to vetoing the probation bill, there are some things in your public proclamation that I feel need to be addressed and publicly corrected.

"Your proclamation states that attempts to modify the bill to improve public safety were rebuffed. It is my recent understanding that your office presented recommendations to Sen. Whitmire the day he heard the bill in the Senate Committee; however, this amended version of the bill was never brought to the author's attention. Subsequent discussions indicate that your efforts were made only in the Senate after the bill had passed through the House chamber.

"Governor, I feel that it is legislative courtesy that attempts to change the bill are at least discussed with the author of the bill. The changes your office proposed were never discussed with the author. While the Senate is clearly capable of altering legislation in their own chamber, on a bill of this magnitude and importance it is only correct to hold open discussion of proposed changes.

"The bill was developed by the House Committee on Corrections and any legitimate attempts to alter the bill were seriously considered on the House side. Several recommendations were accepted and I never rebuffed reputable attempts that would have provided greater public safety. I worked with some concerned legislators and the Texas District and County Attorneys Association before House floor debate and brought to the floor a five page amendment accommodating their concerns.

"Moreover, before bringing the bill to the floor, I met with the District Attorney for Williamson County. I considered his recommendations and incorporated some of them into the bill, including notification for district attorneys when a probation official identifies a probationer as eligible for mandatory review. Another constructive recommendation was an amendment brought to us by Rep. Keel that eliminated state jail felonies and first and second degree felonies from the list of offenses that would have a shortened probation term. This was the most serious and significant proposed suggestion to the bill, and it was accepted by the author.

"Let me state to you specifically that no one brought to us a problem of assaulting a peace officer. Had someone from your office addressed the author of the bill with this concern prior to your veto, I would have been more than happy to explain it to you. It appears to me to be a bad job by the prosecutor if someone who seriously assaults

a peace officer or takes away a peace officer's weapon receives probation. A third degree assault on a peace officer requires infliction of a minimum amount of pain – but no injury. Second degree assault on a peace officer requires serious bodily injury be inflicted. Suspended sentence probation as well as deferred adjudication probation have been available for both of these offenses for over 20 years. As I am sure you are aware, there are different degrees of assault, and a defendant who seriously assaults a peace officer should not receive probation.

"As for reducing the maximum levels of probation, HB 2193 did not simply shorten probation terms, it required more judicial involvement. Any offender that currently is punished with 10 years of probation could have had 10 years of probation under HB 2193 because the judge had the ability to extend the probation term by up to five years. Judicial involvement would have been increased under HB 2193 because it would have been mandatory that the judge review the defendant upon completion of one-half of the probation term if all other terms of probation had been met.

"Concerning the added court fines to expand drug courts in Texas, I agree with you that there was no appropriation of these new revenues and the intended purpose would not be funded. However, since there was a problem with the appropriations bill, we will be back in 2007 to address drug courts.

"Same as you, I also support and encourage added probation funding. However you were incorrect in your proclamation when you stated that the appropriations bill provides $55 million in additional funding for probation officers. The appropriations bill provides $28.2 million in additional funding for probation officers and $27 million for residential treatment and sanction beds. Although $28.2 million will assist in easing the strain on our probation system, it is merely pennies in the bucket. Reducing caseloads through additional funding is not enough to make our probation system effective. The state needed real probation reform – the state needed HB 2193.

"While on the subject of the budget, it is important that I bring to your attention the effect your line item vetoes in SB 1 will have on our criminal justice system. Last week I was informed that our prisons have reached capacity and that the Texas Department of Criminal Justice (TDCJ) will be contracting 575 new beds in our county jails. Today I learned that you have line item vetoed $19.2 million dollars in new funding for TDCJ to contract these beds from county jails. This trend of contracting with county jails will continue as our system continues to put nonviolent criminals behind bars for technical revocations.

"Additionally, $6.5 million was vetoed from CJAD that provided Treatment Alternative and Incarceration Programs (TAIP). Throughout the legislative process this session, all interested parties have noticed we need additional funding for treatment. This veto

furthers our crisis and need for additional funds for treatment in our criminal justice system. Denial of these treatment resources will only result in more low level drug offenses going to an already overloaded and expensive prison.

"Finally, I would like to point out some aspects of the bill that are in fact very conservative:

1. The bill would have made it impossible for a jury to give probation in a first degree murder case. Current law prevents a judge from suspending a murder sentence and granting probation. There certainly wasn't anything soft in this provision.

2. The bill would have required review of most probationers when they completed one-half of the supervision period and all other terms of their probation, with the judge retaining full authority to continue them under supervision if they pose any danger to public safety. Current law permits a judge to grant early release to many probationers when they have completed one-third of their supervision period or two years, whichever is less. The bill would have required review after one-half of the supervision period and those offenders would have thus been under supervision longer than is permitted in current law.

3. As of now, roughly 20 percent of our probationers are absconders. The proposal that you have vetoed would have strengthened the probation system by redirecting scarce resources to more dangerous offenders as well as probationers that have fled. HB 2193 would have allowed the review and release of low level third degree felons who fully complied with supervision rules so that probation officers could concentrate on finding and supervising the first, second, and third degree felony absconders who are currently in our communities without any supervision or sanctions whatsoever. Wouldn't it make more sense to supervise them, rather than those who have successfully followed the rules? Thus, the bill would have made our communities safer.

4. This bill would have allowed judges to use more discretion within their communities, and would have expanded the extremely popular and successful drug courts from our eight largest counties to our 20 largest counties. Your veto of this bill eliminated the mandatory drug court provisions. These courts have been extremely successful in reducing crime across Texas and the nation and those results come at a minimal cost.

5. The bill would have reduced the initial supervision period for some third degree felons from 10 years to five years, with the judge having full authority to extend the period up to 10 years if necessary. The supervision for serious and violent offenders would have remained unchanged.

"In closing, I would like to bring to your attention the fact that the Governor's Office representative that was responsible for covering the House Committee on Corrections never attended a public or formal hearing. Moreover, she never offered input or recommendations to the committee on any piece of legislation, including the probation bill which you have now decided to veto.

"I offer you this information because among the objections that you raise in your public proclamation you state, 'attempts to improve this legislation that would have provided greater public safety were rebuffed, ensuring a flawed piece of legislation that would ... have made needed improvements to our probation system.' I find it interesting that you clearly state that improvements to our probation system are needed (which is of course why this bill was drafted in the first place), and yet the author of this bill was never given any amendment or recommendation by the Governor's office concerning the probation bill.

"It is my hope that you take into consideration six years of hard work and dedication by both the Corrections and Criminal Justice Committees and work with us to improve community supervision in the future. We are working on this bill at the present time and we will continue to look at legislation that will make much needed improvements on the probation system, including concerns that you expressed in your veto.

"As it has always been, my office is open to you and your staff as we continue to work on these issues throughout the interim."

Sen. John Whitmire, the Senate sponsor, said he concurred with Rep. Madden's comments.

NOTES: HB 2193 was analyzed in Part One of the May 12 *Daily Floor Report*.